

Human Rights Abuses on the Net

By MAEGAWA Toru

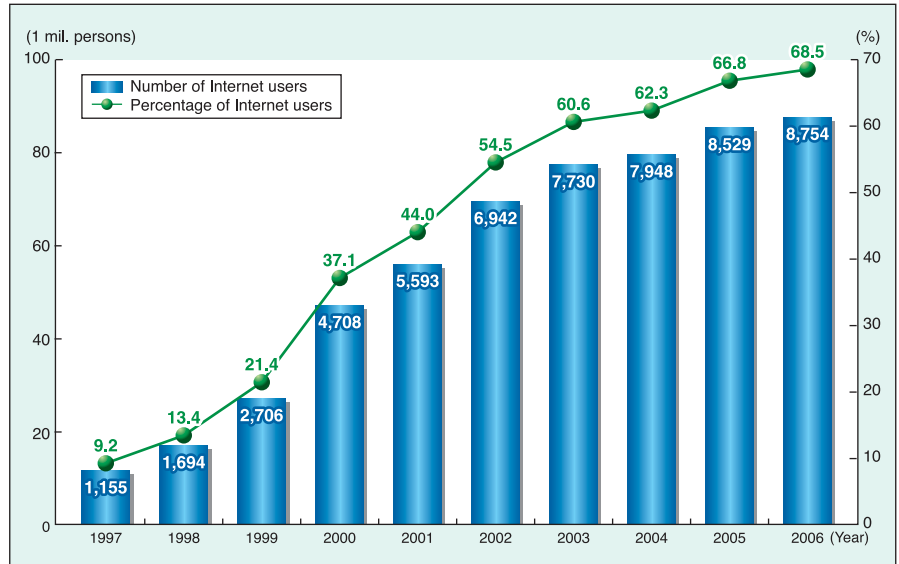
The Internet, notably the World Wide Web, is taking root as a new means of media in Japan as is the case in the rest of the world (Chart 1). It is good that anyone is now able to transmit information easily on the Internet. But on the other hand, this brings about a variety of problems. They include, for example, unfair copying of digital content, circulation of harmful information, and human rights abuses through such acts as defamation and slander. This article looks into human rights infringements on the Internet.

Enjou (in flames), Matsuri (festa), Hakkutsu (excavation)

First of all, let us look at several specific cases. Family affairs commentator Ikeuchi Hiromi once wrote on her blog about a young seasonal factory worker whom she happened to meet at an *izakaya* (tavern), pointing out his lack of ambition. Voices of criticism poured into her blog, which then “went into flames.” In addition, an anti-Ikeuchi thread was opened on Japan’s largest anonymous electronic bulletin board *2channel*. Forum participants accused Ikeuchi of insulting the seasonal worker and hurled derogatory and defaming messages against her. Some messages posted on *2channel* insulted Ikeuchi’s relatives. In February 2007, the situation escalated with the arrest of a corporate employee, aged 45, who had posted messages such as “Setting fire to her classroom (at a cultural center) would easily end it” and “Dyeing the cultural center with blood would bring about an easy settlement.” She had been scheduled to give a speech at the center at that time.

It is not uncommon for someone’s blog to be taken up on such a giant electronic forum as *2channel* and to “go up in flames,” regardless of the blogger’s name recognition. In the fall of 2006,

Chart 1 Number of Internet users & their percentage in the population



Source: “2006 Survey on the Use of Communications (Household Version),” Ministry of Internal Affairs & Communications

blogs operated by writer Otake Hirota and a member of the Kanagawa prefectural assembly “went into flames.” Otake, born without top halves of limbs, is known as the author of his memoir “*Gotai Fumanzoku*” (No One’s Perfect). In 2007, a photogenic model was expelled from her high school for publishing an album of her swimsuit photos.

Moreover, in some cases, users post a large number of defamatory messages against a particular individual on a thread opened on the *2channel* forum. This phenomenon is called *matsuri* (festival). In addition, there is another phenomenon called *hakkutsu* (excavation). Through the *hakkutsu* practice, the targeted blogger’s real name, photos, place of employment, family makeup and children’s schools are exposed. In this situation, the targeted blogger and his/her family could be harassed by a flood of e-mails and phone calls, or might even be questioned by strangers on the street. Such phenomena have become a reality.

Incidents Involving Animal Hospital, Nippon Life Insurance

A number of defamation and business obstruction cases over the Internet have been reported since anonymous electronic bulletin boards were established. Mass media reports took up a case involving an animal hospital in 2001. It was sparked by bulletin board messages about the hospital, accusing it of doing “unnecessary treatment,” offering “wrong diagnosis,” using “fraudulent” tactics and acting in a “know-it-all” manner. Some postings termed the hospital a “dirty player” and its veterinarian a “quack,” and demanded that it “stop experiments on animals.” After noticing these postings, the hospital asked the bulletin board operator to delete the messages. The hospital was then ridiculed for its “wrongful method” in filing the deletion request. The hospital and its managing veterinarian sued the operator of the *2channel* forum. They won the legal battle in convincing fashion, with the court accepting most of

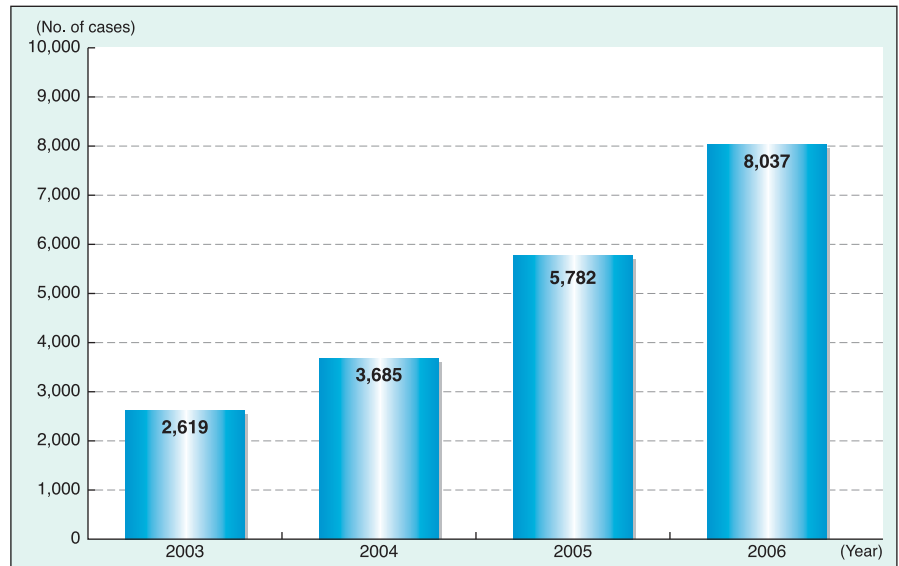
the plaintiff's arguments.

Around the same time, a similar case of defamation hit Nippon Life Insurance Co. Nippon Life filed for a temporary injunction with the Tokyo District Court in March 2001, seeking a court order for the *2channel* operator to delete defamatory messages against it. Nippon Life argued that bulletin board participants had continued to defame the insurer on the *2channel* forum since the autumn of 2000. In August 2001, the court issued a temporary decision ordering the operator to delete the defamatory messages.

These postings can be broken down largely into three categories. The first includes messages intended to directly defame Nippon Life, such as "Nippon Life is a demon" and "Go under." The second category is the kind of message that takes up in-house extramarital affairs and claims that company morals are in disorder. The third category involves postings on sales attitudes and methods on the part of Nippon Life's sales staff. Messages in this category include the following: "A Nippon Life employee who is my neighbor is circulating such groundless rumors as 'A major life insurer is on the verge of collapse' and 'Now is the time to convert to Nippon Life.'" "A Nippon Life saleswoman persistently urged me to cancel my life insurance contract, saying my insurer is feared to collapse." "I was told the same thing...that after Tokyo Mutual Life Insurance collapsed, the next is your insurer." "I was offered a discount on insurance premiums, but isn't there something wrong with that?"

The main problem is the third category. In November 2001, or a little more than two months after the Tokyo District Court issued the injunction ordering message deletion, the Financial Services Agency ordered Nippon Life to improve its business practices, saying the major insurer created documents slandering its competitors. In other words,

Chart 2 Number of complaints to police on defamation/slander cases



Source : National Police Agency's report on cybercrimes uncovered & complaints filed with police in 2006, released on Feb. 22, 2007

bulletin board messages whose deletion was sought by Nippon Life as groundless can be considered to have included statements close to truth or based on truth.

Defamation/Slander Cases Rising

In Japan, acts of slander on the Internet constitute crimes of defamation, insult and business obstruction as stipulated respectively in Articles 230, 231 and 233 of the Penal Code, regardless of whether the statements released are true or not. These acts are considered unlawful under Articles 709 and 710 of the Civil Code, and compensation claims can be filed against them.

These acts constitute unmistakable crimes and many people have been arrested as suspects of these crimes while some have been ordered by court to pay damages. Despite this, why is it that the number of defamation and slander cases on the Internet is increasing?

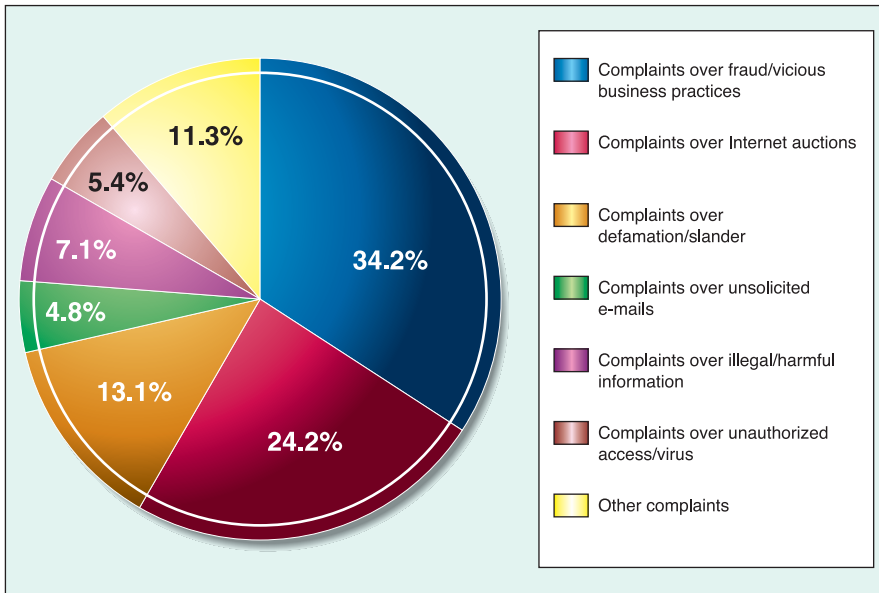
According to the National Police Agency's report on 2006 cyber crimes

released in February 2007, defamation and slander accounted for 13.1% of all complaints filed with the police across Japan, showing a sharp increase from 5.2% in 2004 and 6.9% in 2005. The number of defamation and slander cases more than doubled in two years from 3,685 in 2004 to 5,782 in 2005 and then to 8,037 in 2006. These figures should be considered to be the tip of the iceberg because a vast number of victims stay silent, unable to file complaints with the police. In reality, there is no doubt that many more cases of defamation and slander exist on the Internet. (Chart 2 & 3)

Slander & Freedom of Speech

Anonymity on the Internet is certain to be one of the reasons for such an increase in unlawful acts. There is no need for users to disclose their identity in cyberspace, and false personal information regarding age, gender and so on can be used. Anonymity encourages bulletin board participants to post

Chart 3 Percentage of defamation/slander complaints in total cybercrime complaints filed with police (2006)



Source : Report on cybercrimes uncovered & complaints filed with police in 2006, released by National Police Agency on Feb. 22, 2007

extreme messages out of the (wrong) sense of safety that they can severely attack others but can remain in the safe zone, out of the reach of counterattacks.

Secondly, group psychology is behind the growing unruly cyberspace behavior. Even though they are aware that slander against a specific individual constitutes an infringement of human rights, forum participants, when seeing a bulletin board full of abusive posts, might become unable to make reasonable judgments and simply follow suit.

Thirdly, some participants wrongly interpret the freedom of speech (freedom of expression) guaranteed under Article 21 of the Constitution to mean that they can post any kind of message on the bulletin board. Of course, freedom of speech is not guaranteed without any restriction. Speech that infringes on human rights is not protected under the Constitution. However, the boundary between slander and lawful speech is unclear.

The Penal Code sets an exemption for defamation under an extra provision of Article 230. The provision stipulates that punishment shall not be imposed on a person who defames another by alleging facts in public as long as the act is found to relate to matters of public interest and to have been conducted

mainly for the benefit of the public. The provision is intended to socially guarantee freedom of speech and of the press. Bulletin board messages against Nippon Life's sales methods mentioned earlier depict facts related to public interest. No one can deny the possibility that these messages were intended to serve the public interest, though the target was a business entity.

Some forum participants are confident that they are alleging facts to serve the public interest and that they are working for justice and conducting a fair act of criticism. Needless to say, comments for justice and slander are mixed in these arguments.

Now, what should we do to deal with this problem?

Arguments Concerning Anonymity

Some people call for the removal of the Internet's anonymous nature to solve the problems of human rights abuse and business obstruction. Indeed, in a way anonymity does encourage acts of slander and invasion of privacy. However, it does not follow that removing the anonymous nature from the Internet is a just and reasonable resolution to these problems.

On the other hand, many argue for

defending anonymity on the Internet. This is because in some cases information senders need to be protected. Whistle-blowers cannot transmit information unless they are anonymous. Certain information might be useful for society but harmful to the organization to which a whistle-blower belongs. For example, a whistle-blower may be unable to transmit information on automobile defects that is covered up by the manufacturer unless the information transmitter can remain anonymous. There is the danger that an accuser of a crime will be subject to attacks. In the event that the accused is an antisocial organization, the accuser would likely face physical danger if the complaint is made under a real name. Anonymity would protect the accuser in such a case.

Apart from such an extreme case, one can be the target of *matsuri* on the Internet if one makes remarks that attract public attention. One may also face acts of harassment from those who are critical of the information transmission itself. In some cases, one's privacy may be violated by the mass media.

Some media reports easily point the finger at Internet anonymity whenever a cyberspace-related scandal breaks out. Some call for banning information from being transmitted unless it is sent with the sender's real name. We must remember, however, that some things need to be protected by anonymity.

The political pamphlet "Common Sense," published in February 1776, had a major impact on the American Revolutionary War. At present, the author of "Common Sense" is widely known as Thomas Paine. At the time of the publication, however, the pamphlet carried no name of its author. Paine writes in the introduction of the pamphlet:

Who the Author of this Production is, is wholly unnecessary to the Public, as the Object for Attention is the Doctrine itself, not the Man. Yet it may not be unnecessary to say, That he is unconnected with any Party, and under no sort of Influence public or private, but the influence of reason and principle. Philadelphia, February 14, 1776. (Source: <http://www.bartleby.com/133>)

This is quite true. What is important is the doctrine itself, not the author. A mechanism that could identify the author only when a problem arises is desirable.

It is unrealistic to completely remove anonymity from the Internet. Most communication over the network is effectively “anonymous.” Personal identification on the network is technically possible, but is limited to cases where one uses authentication technology, such as electronic signatures, that can be checked by a third party.

Even if messages on the Internet were required to be written with real names, it would not be easy to confirm who really sent the messages. If a message with the byline of “Maegawa Toru” is found posted on the Internet, it would be practically impossible for general Internet users to confirm if it was actually sent by Maegawa Toru.

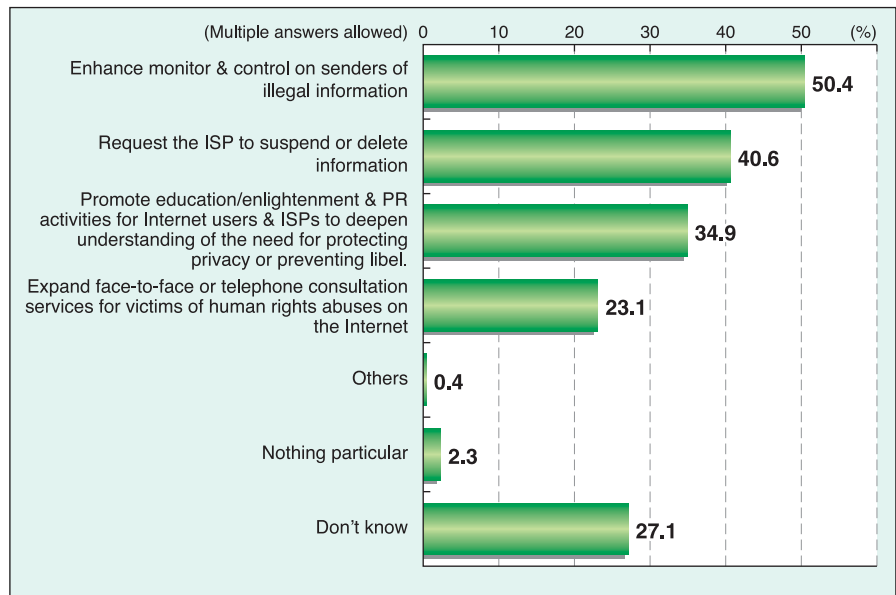
Mechanism of Traceability

A realistic solution is the establishment of a mechanism that could ascertain if postings on the Internet infringe on human rights or constitute business obstruction, and if so, then identify the transmitter of the relevant information.

Fortunately, Japan has a law that helps identify senders of defamatory and/or slanderous messages on electronic bulletin boards. The law lays down restrictions on damages liability on the part of specific telecommunication service providers and on the disclosure of information about message senders, which is commonly called the Internet service providers’ responsibility law or simply the ISP law.

The Internet involves anonymity, but its anonymous nature is not perfect. Messages on anonymous bulletin boards can be traced to identify the computers used by analyzing communication and server records known as Internet access logs. The ISP law, which came into effect on May 27, 2002, enables claimants of rights infringement by information on the Internet to demand that Internet service providers or Web server operators disclose access log information. Indeed, the number of such demands filed with

Chart 4 Measures needed to resolve human rights abuses on the Internet



Source : “Public Opinion Survey on the Protection of Human Rights 2003,” Ministry of Internal Affairs & Communications

providers and server operators is increasing.

However, this mechanism is not sufficiently functional. If the mechanism had functioned well, Internet human rights abuses would not have become so serious. There are two problems concerning the disclosure of access information. The first is that bulletin board operators are not required to store access logs. The second is that no swift disclosure of access information is made due to the absence of clear-cut standards. Unless these two problems are overcome, the number of cases involving slander on the Internet will only continue to increase.

Importance of Education

In addition to these measures, the promotion of education on freedom of speech and on human rights is also needed. In Japan, educational efforts for such freedom and human rights are not adequate. This is the root of the problem.

Freedom of speech must be protected in society. It is a crime, however, to post messages that would damage the reputation of others or violate others’ privacy, except in cases where the messages relate to matters of public interest

and at the same time aim mainly at serving public benefit.

It is not desirable from the viewpoint of freedom of speech to bar or restrict people from making anonymous speeches or posting anonymous messages because of an increase in human rights abuses on the Internet. At the same time, no one should be allowed to easily resort to freedom of expression or freedom of speech to damage others with slander. Freedom of expression and freedom of speech are part of fundamental human rights. However, no one is given the freedom to damage others with slander, invade others’ privacy, or post messages that intimidate others.

It is necessary to teach the basics of freedom of speech and human rights properly in the educational process, and to give the knowledge and foster the capabilities that are essential for people to survive the Internet society properly and safely. If this is done, though they would not be eliminated altogether, Internet human rights abuses could be substantially decreased. (Chart 4) JS

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